Customer No.: 22,852
Application No.: 09/965,792
Attorney Docket No. 05725.0963-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
	)	
Pascale BERNARD et al.	)	
	)	
Application No.: 09/965,792	)	Group Art Unit: 1617
	)	
Filed: October 1, 2001	)	Examiner: M. A. Willis
	)	
For: FILM-FORMING COSMETIC COMPOSITION	)	
	)	

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

RESPONSE TO RESTRICTION REQUIREMENT

In the Office Action mailed July 16, 2002, the Examiner has required restriction to one of the following groups of claims:

Group I: Claims 1-70, drawn to compositions comprising a polymer in aqueous dispersion and two organic solvents; and

Group II: Claims 71-76, drawn to methods for making up keratinous material or forming a film on keratinous material.

The restriction requirement, as set forth above and on pages 2-3 of the Office Action, is respectfully traversed. However, to be fully responsive to the restriction requirement, Applicants elect, with traverse, the subject matter of Group I, Claims 1-70.

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Applicants refer the Examiner to M.P.E.P. § 803, which sets forth the criteria and guidelines for Examiners to following making proper requirements for restriction. The M.P.E.P. instructs Examiners as follows:

> If the search and examination of an entire application can be made without **serious burden**, the Office **must** examine it on the merits, even though it includes claims to distinct or independent inventions.

M.P.E.P. § 803 (emphasis added).

Here the Examiner has not shown that examining the above groups together would constitute a serious burden. In fact, according to the present Office Action, Groups I and II are both classified in the identical class (class 424) and identical subclass (401). Accordingly, a search for these groups of claims will substantially, if not completely, overlap. Thus, for at least this reason, Applicants respectfully submit that the restriction requirement is in error and request that the requirement be withdrawn.

Applicants also acknowledge the Examiner's requirement for the election of species, i.e., "a single polymer and two separate solvents," for Group I, presented at paragraph 4, page 3 of the Office Action. Applicants elect with traverse, incorporating all above mentioned arguments, the following species:

(a) a polymer obtained by polymerization of acrylic acid, n-butyl acrylate, lauryl acrylate, methylmethacrylate, tert-t butyl acrylate, and styrene,

(b) first organic solvent: propylene glycol n-butyl ether

(c) second organic solvent: diethyl sebacate.

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Finally, Applicants refer the Examiner to M.P.E.P. § 809, which sets forth guidelines for Examiners to follow in making proper election of species requirements. Applicants expect, pursuant to M.P.E.P. § 809 and 37 C.F.R. § 1.141, that other species will be considered if the elected species is found patentable.

If the Examiner believes a telephone conference would be useful in resolving any outstanding issues, he is invited to call the undersigned at (202) 408-4454.

Please grant any extensions of time required to enter this response and charge any required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, L.L.P.

By: Thalia V. Warnement
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Dated: August 14, 2002

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